

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF REVENUE

In the Matter of the Revocation of the  
Sales Tax Permit of:  
Technical Services & Info. Inc.,  
372 St. Peter Street  
St. Paul, MN 55102-1316,  
MN I.D. #1661375-001

FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION

The above-entitled matter was heard by Administrative Law Judge Jon L. Lunde commencing at 3:00 p.m. on Wednesday, July 23, 1997 at the Office of Administrative Hearings in Minneapolis, Minnesota. The hearing was held pursuant to a Notice and Order for Hearing dated June 12, 1997.

Donald J. Brown, Revenue Collection Officer, Minnesota Department of Revenue, 5270 West 84th Street, Suite 400, Bloomington, MN 55437-1378, appeared on behalf of the Minnesota Department of Revenue (Department). Kevin Reiersen, President, Technical Services & Info. Inc., 372 St. Peter Street, St. Paul, MN 55102-1316, appeared on behalf of Technical Services & Info. Inc. (Taxpayer). He was accompanied by his accountant, Warren Larson. The record closed at the conclusion of the hearing on July 23, 1997.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Revenue will make the final decision after reviewing the record and may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact James L. Girard, Commissioner, Minnesota Department of Revenue, 10 River Park Plaza, St. Paul, MN 55146 to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this case is whether the taxpayers sales tax permit should be revoked as a result of its failure to file sales tax returns and pay sales taxes owed to the Department under Minn. Stat. §§ 289A.11, 289A.18 and 289A.20 and 297A.07 (1996).

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

The Taxpayer, Technical Services & Info., Inc., is a closely held corporation holding Minnesota Sales & Use Tax Permit #1661375-001. Kevin Reiersen is its President and sole stockholder. The Taxpayer is engaged in the security business. It was engaged in the private detective business before its license was revoked for state tax arrearages. It is now involved in security consultation and the sale of security equipment. The Taxpayer is making retail sales and collecting sales taxes on those sales. Last year its gross sales were approximately \$100,000.

For the calendar years ending December 31, 1993, 1994 and 1995, the Taxpayer did not file his annual sales tax returns. Consequently, the Commissioner's staff prepared and filed returns for those three years based upon all available information pursuant to Minn. Stat. § 289A.35 (1996).

On February 20, 1997 a Commissioner Filed Return Assessment letter was mailed to the Taxpayer notifying it that the Department had prepared returns for the three calendar years ending December 31, 1995 based upon available information. Ex. 1. The assessment letter advised the Taxpayer that the amount due for those three filing periods was \$3,569 and stated:

File and pay your own return within 30 days of the date of this notice to avoid the initiation of collection action against you. This action may include taking money from your bank account, taking a portion of your wages, or seizing your real or personal property. A tax lien may be filed prior to the expiration of the 30 days based upon the tax amounts assessed in this letter.

Returns prepared by the Commissioner are considered to be correct. You cannot administratively appeal these returns but you may appeal them to the tax court within 60 days of this letter.<sup>1</sup>

Ex. 1.

The Commissioner Filed Return Assessment letter contained an itemization of the taxes, penalties and interest owed to the Department by the Taxpayer for the three annual filing periods ending December 31, 1995 as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalty</u>	<u>Interest</u>	<u>Other</u>	<u>Total</u>
December '93	260.00	52.00	71.00	0	383.00
December '94	1,070.00	214.00	214.00	0	1,498.00

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<sup>1</sup> Pursuant to Minn. Stat. §§ 271.06 and 271.21 the Taxpayer may appeal Commissioner Filed Return Assessments in the regular or small claims division of the tax court.

December '95	1,284.00	256.00	147.00	0	1,688.00
Total	2,614.00	522.00	432.00	0	3,569.00

5. Returns reflecting the delinquent taxes, penalties and interest owed by the Taxpayer were filed by the Department on February 21, 1997. Ex. 5.

6. The Taxpayer did not file any tax returns or pay taxes owed for the three calendar year filing periods ending December 31, 1995 within the 30-day period set forth in the Commissioner Filed Return Assessment letter. The returns are still unfiled and the sales taxes unpaid. Moreover, the Taxpayer did not appeal from the returns prepared by the Commissioner's staff within the 60-day deadline set forth in the assessment letter and in Minn. Stat. § 271.06, subd. 2 (1995).

7. Because the Taxpayer neither filed returns for the three calendar years ending December 31, 1995 nor appealed the returns prepared by the Commissioner's staff to the tax court, the Department notified it, in writing, that it intended to revoke its sales tax permit. A Notice of Intention to Revoke Sales Tax Permit was mailed to the Taxpayer on May 7, 1997. The Notice stated that revocation could be avoided if the Taxpayer paid the Department \$3,102.98 and filed and paid all taxes, penalties and interest due for the calendar year ending December 31, 1996 in secured funds. Ex. 2. The Taxpayer did not pay the amounts owing to the Department. However, it requested a hearing on the proposed revocation of its sales tax permit. Ex. 3.

8. For the calendar year ending December 31, 1994, the Taxpayer owes delinquent taxes of \$1,070.00, penalties of \$32.88 and interest of \$249.97, being a total liability of \$1,352.85. For the calendar year ending December 31, 1995, the Taxpayer owes delinquent sales taxes of \$1,284.00, penalties of \$257.00, interest of \$194.34, other charges of \$90.00, being a total of \$1,825.34. Sales tax returns for the calendar year ending December 31, 1996 have not been filed and the Taxpayer's liability for that period is estimated at \$2,500.00. Excluding the taxes owed for the calendar year ending December 31, 1996, the Taxpayer's total sales tax delinquency, including penalties, interest and other charges, is \$3,178.19 as of July 23, 1997.

9. The Taxpayer has, at no time, filed sales tax returns or made any voluntary payments of his debt to the Department. He requested a payment agreement but the Department refused to negotiate one under its policy precluding payment agreements with taxpayers who have not filed required tax

returns. The Taxpayer has not only failed to file required sales tax returns but also has failed to file his State and Federal income tax returns for the past several years.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### CONCLUSIONS

1. The Commissioner of the Minnesota Department of Revenue and the Administrative Law Judge have authority to consider the Department's proposed revocation of the Taxpayer's sales and use tax permit under Minn. Stat. §§ 297A.07 and 14.50 (1996).

2. The hearing notice is proper as to form and content and all other relevant substantive and procedural requirements of statute and rule have been followed by the Department, and this matter is, therefore, properly before the Administrative Law Judge.

3. Pursuant to Minn. R. 1400.7300, subp. 5 the Department has the burden of proof to establish, by a preponderance of the evidence, that the Taxpayer has not filed required sales tax returns and paid sales taxes owed to the Department.

4. The Commissioner filed returns for the three calendar year reporting periods ending December 31, 1995 are prima facie correct and valid. Minn. Stat. § 289A.35 (1995) and Minn. R. 8160.0620 (1995).

5. The Taxpayer currently owes the Department \$3,178.19 for the three filing periods ending December 31, 1995 and an undetermined amount for the filing period ending December 31, 1996 for which sales tax returns, though due, have not been filed.

6. The Respondent has failed to file sales tax returns and pay sales taxes owed to the Department in violation of Minn. Stat. §§ 289A.11 and 289A.20, subd. 4.

7. Under Minn. Stat. § 297A.07 (1996), the Commissioner is authorized to revoke the Respondent's Sales Tax Permit as a result of the Taxpayer's failure to file sales tax returns and pay sales taxes owed to the Department.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the Commissioner of Revenue revoke Sales Tax Permit #1661375-001 issued to Technical Services & Info. Inc.

Dated this 1st day of August, 1997.

/s/

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JON L. LUNDE

Administrative Law Judge

Reported: Taped, not transcribed.

### NOTICE

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

### MEMORANDUM

The Taxpayer argued that he has not attempted to defraud the Department and that he intends to file all delinquent returns within the next 30 days. He suggested that the Department's refusal to enter into a payment agreement with him will unfairly put him out of business and that the Department should negotiate a payment agreement with him. The purpose of revoking sales tax permits is to stop the escalating tax liability of sales tax permit holders who fail to comply with the sales tax laws. Whether the Taxpayer's failure to file sales tax returns and pay sales taxes owed to the Department is fraudulent or not is not an issue in this proceeding. The only issue is whether there has been noncompliance with laws relating to the filing of returns and the paying of taxes. The Department has clearly established that the Taxpayer is in noncompliance with sales tax laws relating to the timely filing of sales tax returns and that he is indebted to the Department for sales taxes which he has improperly failed to remit to it. Therefore, his sales tax permit should be revoked.

Although the Taxpayer suggested that the Department should enter into a payment agreement, the Commissioner's policies and decisions regarding the terms and conditions of a payment agreement, or whether a payment agreement will be allowed, is not an issue in this proceeding. It is a decision solely within the discretion of the Commissioner.

The Taxpayer also suggested that the Commissioner filed Returns overstate the amount of sales taxes owed. However, the Commissioner filed returns are prima facie correct under Minn. Stat. § 289A.35 (1995).

J.L.L.